

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16719 OF 2024

VISHAL
SUBHASH
PAREKAR

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M/s. Marathas Realty Ventures
Through partners

...Petitioners/
(Ori.Deft.Nos.42(a) to (c)

vs.

Rohidas Dhondiba Yewale

...Respondent

Mr. Harish Pawar a/w. Mr. Rahul Sagar, for the Petitioner.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 13, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 1st February, 2016 passed by the learned Civil Judge Senior Division, Pune on an Application (Exh.164) filed by defendant No. 42 seeking condonation of delay in filing the written statement, whereby the said application came to be rejected.
3. The suit summons was served on the defendant No. 42/ petitioner on 15th May, 2015. Defendant No. 42 did not file written statement within the stipulated period. Hence, the Application (Exh. 164) was filed seeking condonation of delay and permission to file written statement asserting that due to unavoidable circumstances, the defendant could not appear before the Court and file the written statement. By the impugned order, the learned Civil

Judge was persuaded to reject the application holding that there was a vague assertion in the application that on account of unavoidable circumstances the written statements could not be filed, within the stipulated period, without spelling out what those unavoidable circumstances were. It appears that the defendant No. 42 filed an application to review the said order. By an order dated 19th November, 2016, the said Review Application also came to be rejected. The instant petition seems to have been filed in November, 2024.

4. Mr. Harish Pawar, the learned counsel for the petitioner, urged that there was a delay of 29 days in filing written statement. The learned Civil Judge took a very hyper-technical view of the matter and rejected the application for condonation of delay. To advance the cause of substantive justice, the petitioner/ defendant No. 42 deserves an efficacious opportunity to contest the suit on merits, lest the petitioner would suffer an irreparable loss.

5. In the peculiar facts of the case, I am unable to persuade myself to agree with the submissions of Mr. Pawar. Undoubtedly, the provisions contained in Order 8 Rule 1 of the Civil Procedure Code, 1908 prescribing the time limit for filing written statement have been construed to be directory and not mandatory. Yet the provision contained in Order 8 Rule 1 prescribing the time limit

cannot be so construed as to completely defeat the legislative intendment. In the least, the defendant is expected to ascribe a cause for failure to file the written statement within the stipulated period.

6. A useful reference in this context can be made to a three Judge Bench decision of the Supreme Court in the case of **M/S. R.N. Jadi & Brothers & Ors vs. Subhashchandra**¹ wherein the approach of the Court in the matter of insisting filing of written statement within the stipulated period and condonation of delay in filing the written statement, was expounded as under:-

24] It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash vs. Nankhu and others* (2005 (4) SCC 480) which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in *Kailash vs. Nankhu and others* (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. *Kailash* is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

25] A dispensation that makes Order VIII Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond

1 AIR 2007 Supreme Court 2571.

90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in ALLEN vs. SIR ALFRED McALPINE & SONS [(1968) 1 All E.R. 543] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?

7. In the case at hand, the application filed by the defendant seeking condonation of delay in filing the written statement singularly lacks reason. A bald contention was taken that on account of unavoidable circumstances, the defendant could not appear and file the written statement. The trial Court was fully justified in recording a finding that no effort was made by the defendant to ascribe the reasons by spelling out the purported unavoidable circumstances. Thus, the trial Court cannot be said to have committed any error.

8. Had the matter been restricted to the aspect of condonation of delay in filing written statement alone, probably this Court could have been persuaded to take a different view of the matter. There is an element of delay and laches in invoking the jurisdiction of this Court as well. The trial Court declined to condone the delay by an order dated 1st February, 2016. Review Application was also

rejected on 19th November, 2016. The applicant has invoked the writ jurisdiction of this Court after almost eight years. In the instant petition also, the Court does not find any explanation, much less a justifiable one, for the inordinate delay in approaching this Court. The petition suffers from delay and laches also.

Hence, the following order.

ORDER

The petition stands dismissed.

(N. J. JAMADAR, J.)